

3939.

BOARD OF EDUCATION—CERTIFICATION OF AMOUNT TO BE APPORTIONED EACH SCHOOL DISTRICT BY COUNTY BOARD OF EDUCATION TO COUNTY AUDITOR—AUDITOR MAY NOT MAKE DEDUCTION WHEN.

SYLLABUS:

In the event a county board of education fails to certify to the taxing authority of the several school districts of a county school district an estimate of contemplated revenues and expenditures as provided by Section 5625-20, General Code, the county auditor of the county in question is without authority to deduct from the revenues of the several districts as provided by Section 4744-3, General Code, the amount certified to him by the county board of education pursuant to the provisions of Section 4744-2, General Code.

COLUMBUS, OHIO, February 13, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Section 4744-2, General Code, requires the county board of education to certify to the county auditor the amounts to be apportioned to each district for payment of its share of the salaries of the county superintendent, assistant county superintendents, local expenses of the normal schools in each county, and contingent expenses of the county board of education.

Section 4744-3, General Code, requires the county auditor, in making his semi-annual apportionment of school funds to the various village and rural districts, to retain the amounts as certified by the county board of education.

Section 5625-20, General Code, provides that in order to assist in the preparation of the budget, the head of each department, board or commission of each district entitled to participate in any portion of the revenue of a subdivision shall file with the taxing authority thereof before the first of June each year, an estimate of the contemplated revenues and expenditures for the ensuing fiscal year, and the taxing authority shall include in its budget the amounts requested by the district authorities.

QUESTION: In the event the county board of education, being a district authority, fails to certify to the taxing authority of the various school districts the amount each is to have deducted from the revenues of the district, may the county auditor deduct from the revenues of the districts the amounts certified to him by the county board of education under the provisions of Section 4744-2, General Code?”

Sections 4744-2 and 4744-3, General Code, read as follows:

“Sec. 4744-2. On or before the first day of August of each year the county board of education shall certify to the county auditor the number of teachers to be employed for the ensuing year in the various rural and village school districts within the county school district, and also the number of assistant county superintendents employed and their compensation and the compensa-

tion of the county superintendent for the time appointed; and such board of education shall also certify to the county auditor the amounts to be apportioned to each district for the payment of its share of the salaries of the county superintendent and assistant county superintendents and of the local expense of the normal school in each county, and the contingent expenses of the county board of education."

"Sec. 4744-3. The county auditor when making his semi-annual apportionment of the school funds to the various village and rural school districts shall retain the amounts necessary to pay such portion of the salaries of the county and assistant county superintendents and for contingent expenses, as may be certified by the county board. Such amount shall be placed in a separate fund to be known as the 'county board of education fund.'

The county board of education shall certify under oath to the state auditor the amount due from the state as its share of the salaries of the county and assistant county superintendents of such county school district for the next six months. Upon receipt by the state auditor of such certificate, he shall draw his warrant upon the state treasurer in favor of the county treasurer for the required amount, which shall be placed by the county auditor in the county board of education fund."

Section 5625-20, General Code, reads in part, as follows:

"On or before the 15th day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board or commission, and each district authority entitled to participate in any appropriation or revenue of a sub-division shall file with the taxing authority thereof, or in the case of a municipality with its chief executive officer, before the first of June in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the taxing authority of the subdivision, or by the bureau. The taxing authority shall include in its budget of expenditures the full amounts requested therefrom by district authorities, not to exceed the amount authorized by the law applicable thereto, if such law gives such authorities the right to fix the amount of revenue they are to receive from the subdivision. In a city in which a special levy for a municipal university has been authorized to be levied outside of the ten mill limitation, or is required by the charter of the municipality, the taxing authority shall include an amount not less than the estimated yield of such levy, if such amount be requested by the board of directors of the municipal university. * * *

"District authority," as the term is used in the so-called budget law, of which Section 5625-20, General Code, is a part, is defined in Section 5625-1, General Code, as follows:

"'District authority' shall mean each board of directors, trustees, commissioners or other officers controlling a district institution or activity which derives its income or funds from two or more subdivisions, such as the county school board, trustees of district tuberculosis hospitals and district children's homes, district board of health and other boards."

So far as the provisions of Section 4744-2, General Code, with respect to the time for certification by the county board of education to the county auditor of the amounts necessary for administrative purposes by the county board of education, is concerned, it has been held that those provisions are directory and that the certification may be made at any time prior to the making of semi-annual apportionments. In an opinion of a former Attorney General, which will be found in the reported Opinions of the Attorney General for 1918, page 1668, it is said:

“This department has held at various times that the time mentioned, i. e., the first day of August in each year, in Section 4744-2, is directory and not mandatory. That is to say, if the certification of the county board to the county auditor was not for any reason made on or before the first day of August that the board might make such certificate at a later date.”

See also, Opinions of the Attorney General for 1916, page 1964, and for 1931, at page 122.

The question presented by your inquiry is, however, whether or not, in the event the county board of education being a district authority, fails to make the certification provided for in Section 5625-20, General Code, the county auditor is authorized to deduct from the revenues of the several taxing districts involved, the amounts certified to him by the county board of education under the provisions of Section 4744-2, General Code. A very similar question as applicable to a district health board, which is a “district authority” in the same category as a county board of education, was considered in a former opinion of this office, which will be found in the reported Opinions of the Attorney General for 1933, page 149. The conclusion there reached is, in my opinion, dispositive of the question here presented.

Provision is made by Section 1261-40, General Code, for certification by the board of health of a general health district of an estimate in itemized form, of the amount needed for current expenses for such district for each fiscal year. It is further provided therein, that such estimate shall be certified to the county auditor and by him submitted to the budget commissioners who may reduce any item or items in such estimate but may not increase any item or the aggregate of all items. The aggregate amount as fixed by the budget commission shall be apportioned among the townships and municipalities composing the health district on the basis of taxable valuation in such townships and municipalities and when making his semi-annual apportionment of funds, the county auditor is directed to retain at each such semi-annual apportionment one-half the amount so apportioned to each township and municipality. It appears that in a certain health district the board of health had failed to make the proper certification to the county auditor as provided by the statute. It was held as stated in the syllabus of said opinion:

“A county auditor has no authority under Section 1261-40, General Code, to withhold for the district health fund from townships and municipalities in a general health district at any semi-annual tax settlement, tax moneys raised in such subdivisions when no provisions for such items have been included in the annual tax budgets adopted by such townships and municipalities.”

After quoting the provisions of Section 5625-20, General Code, it was stated in the said opinion:

“It is obviously the duty of the board of health of a general health district

to request from the taxing authorities of each township and municipality within the general health district the amount apportioned to such township or municipality by the county auditor for the district health fund. This request should be made on or before the first of June in each year instead of the 30th day of June as mentioned in your letter.

* * * * *

The board of health of a general health district has obviously no authority to appropriate any money for the district health fund when no provisions therefor have been previously made in the tax budgets of the subdivisions within the general health district. * * * I find no authority whereby, under the law as now in force and effect, a district authority may appropriate or receive any part of the proceeds of taxation when no provision has been made for such funds under Sections 5625-20 et seq., of the General Code."

The observations of the Attorney General quoted above, with respect to district health boards are equally applicable to county boards of education and are dispositive of the question before us. I am therefore of the opinion that in the event a county board of education fails to certify to the taxing authority of the several school districts of a county school district, an estimate of contemplated revenues and expenditures as provided by Section 5625-20, General Code, the county auditor of the county in question, is without authority to deduct from the revenues of the several districts as provided by Section 4744-3, General Code, the amount certified to him by the county board of education pursuant to the provisions of Section 4744-2, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3940.

APPROVAL, BONDS OF CANFIELD VILLAGE SCHOOL DISTRICT, MAHON-
ING COUNTY, OHIO, \$2,500.00.

COLUMBUS, OHIO, February 14, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3941.

APPROVAL, BONDS OF JEFFERSON TOWNSHIP RURAL SCHOOL DISTRICT,
GUERNSEY COUNTY, OHIO, \$429.30.

COLUMBUS, OHIO, February 14, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.